

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW MARK KOZLOWSKI,
Plaintiff,

v.

WILLIAM NICHOLAS HUNTING, et al.,
Defendants.

Case No. [15-cv-04756-KAW](#) (PR)

**ORDER OF DISMISSAL WITHOUT
PREJUDICE**

INTRODUCTION

Plaintiff Matthew Mark Kozlowski, a state prisoner incarcerated at Kern Valley State Prison, has filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging that he was physically and mentally abused by his two step brothers and an ex-friend. Plaintiff has consented to the jurisdiction of the undersigned United States Magistrate Judge over this action. Plaintiff's motion for leave to proceed *in forma pauperis* is granted in a separate order. The Court now reviews Plaintiff's complaint.

DISCUSSION

I. Preliminary Review of Complaint

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1), (2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

II. Plaintiff's Claim

In his complaint, Plaintiff alleges that the three Defendants caused him physical abuse throughout his childhood and, in 1999, the abuse left him with amnesia from bullets to his head, baseball bat beatings and cars running over him. Plaintiff was left for dead at Niles Creek so long that mice ate part of his brain. The Defendants also injected Plaintiff with chemicals to erase their crimes from his memory, but one year ago the memories started coming back. He also alleges that Defendants have "stolen" his life story and sold it to book and movie companies without his permission.


In order to state a federal civil rights claim, the defendants must have acted under color of state law. *See* 42 U.S.C. § 1983. Because Defendants are private individuals and are not state actors, Plaintiff cannot state any federal civil rights claims against them. Therefore, this complaint is dismissed. However, Plaintiff may be able to assert state claims against Defendants in state court.

CONCLUSION

The complaint is dismissed without prejudice. If Plaintiff wishes to, he may file state claims against Defendants in state court. The Clerk shall enter a separate judgment and close this case.

IT IS SO ORDERED.

Dated: 10/30/15


KANDIS A. WESTMORE
United States Magistrate Judge